Mental Health Fraud and Abuse

Why look at mental health services?

- Patients trust their therapist/counselor.
- Mentally ill persons often do not understand their Medicare or Medicaid benefits.
- Mentally ill persons are easy targets for exploitation and many of them are abandoned by family members.
- Residents living in residential care facilities (RCFs) are at risk for exploitation by health care providers.
- **The stigma of receiving mental health services may prevent some patients from questioning claims.**

Mental Health Definitions:

Priority Mental Health Populations:

- ✓ Individuals found not guilty by reason of mental disease or defect;
- ✓ Individuals assessed as potentially violent;
- ✓ Forensic populations (involved with courts and the legal system);
- ✓ Persons with serious mental illness;
- ✓ Children and adolescents with a serious emotional disturbance; and
- ✓ Others with mental health needs.

The Arkansas public mental health system serves approximately 72,000 individuals every year.

Psychiatric Inpatient Hospital – The Arkansas State Hospital (ASH), is licensed by the Arkansas Department of Health (ADH) and the Centers for Medicare and Medicaid Services (CMS), for a total of 202 beds, which includes 90 beds for acute psychiatric admission; a 60-bed forensic treatment program which offers assistance to circuit courts; a 16-bed adolescent treatment program for youth (ages 13-18); and a program for juvenile sex offenders.

Partial Hospitalization Programs (PHPs) are designed to keep patients with severe mental conditions from becoming hospitalized by providing intensive psychotherapy in a structured day outpatient setting.

Community Mental Health Centers (CMHCs) are outpatient mental health facilities as designated by the Division of Mental Health. Arkansas has 15 CMHCs that offer 24-hour emergency care and a full array of services including: diagnostic evaluation; treatment planning; individual or group therapy; medication management; case management; crisis services; vocational, housing and educational support; transportation; and rehabilitative and day treatment services.

Residential Care Facilities (RCFs) are licensed long-term care facilities that provide room and board for three or more individuals whose functional capabilities have been impaired but who do not require hospital or nursing home care on a daily basis, but could require other assistance in activities of daily living.

Psychiatric Residential Treatment Facilities (PRTFs) provide 24-hour psychiatric residential treatment for emotionally disturbed children and/or adolescents (6-21 years of age, grouped in an age appropriate manner) in a structured, systematic treatment program under the supervision of a psychiatrist.

Inpatient Psychiatric Hospitals provide acute psychiatric services on an inpatient (24 hours per day) basis for the diagnosis and treatment of adults or children. All services must be provided under the direction of a physician and in a licensed and accredited facility. Medicaid does not cover inpatient psychiatric hospital services for recipients between 21-65 years of age in a private, for-profit psychiatric hospital. General hospitals may have designated inpatient psychiatric hospital units within their facilities.

MEDICAID PATIENT ABUSE OR NEGLECT:

Residents of mental health facilities may be the victims of physical, emotional, sexual and financial abuse. Neglect of patients or residents can constitute abuse as well.

The federal regulations for long-term care facilities state that, "Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care (42 CFR 483**.**25 Quality of care)." Failure to provide that level of care, while billing Medicaid for covered services, is the basis for Medicaid fraud actions against long-term care facilities.

According to the Arkansas Attorney General, "Physical abuse or neglect is any action or failure to act that causes unreasonable suffering, misery, injury or harm to a resident of a health care facility licensed by the Office of Long Term Care...anything from striking or sexually assaulting a patient to withholding necessary and adequate food, physical care or medical attention. Financial abuse includes the misuse of a resident's trust funds to pay for nursing home services already being paid for by the Medicaid program or for uses of a patient's funds not authorized by either the resident or the resident's guardian, trustee, administrator, etc."[1]

Fraud schemes:

- **UPCODING** of psychotherapy sessions by the mental health provider [psychiatrist, clinical psychologist (CP) or clinical social worker (CSW)].

  For example, psychiatrists may conduct group sessions in a nursing home or long-term care facility and bill for individual therapy.

- **Misrepresenting the length of the therapy session.** Traditionally, therapy is offered to the patient in 30-minute or 1-hour sessions. In reality, these sessions are 20 minutes and 50 minutes. The 10-minute difference is allowed for documentation and record keeping. However, it is fraud when the mental health professional charges the 1-hour (50-minute) rate when the patient only received 20 minutes of therapy.

[1] Medicaid fraud & Elderly Abuse, Office of the Attorney General of State of Arkansas, *http://www.ag.state.ar.us/medicaid/abuseneglect.htm.*

- Some PHPs enroll patients who either cannot benefit from the therapy or who participate in little more than social or recreational activities. Typically, the patients have not authorized the services and are not told that they are receiving psychotherapy.

  For example, trips to the store, cooking classes, listening to music and other recreational activities have been billed as psychotherapy.

- **Therapy sessions by unlicensed staff.** Non-licensed staff have performed therapy sessions that were billed as though provided by or under the direct supervision of a licensed practitioner.

Fraud 'Schemes' in Residential Facilities for the Mentally Ill:

- **KICKBACKS.** The facilities that do not provide health care themselves contract with outside providers for health services. They can make a substantial profit by charging contracted providers fees in return for a supply of patients.

  Some also contract with providers who perform unnecessary medical procedures, which are billed to Medicare or Medicaid.

  For example, an ophthalmologist was charged with Health Care Fraud in Connection with Adult Mental Homes in New York because he "repeatedly took advantage of mentally ill residents by performing unnecessary" surgeries and sought reimbursement for services that he never administered.[2]

  U.S. Attorney James Comey said, "Doctors who exploit patients with disabilities solely to satisfy their own greed through Medicare and Medicaid fraud will be vigorously prosecuted."[2]

- **Inappropriate billing practices in residential facilities for the mentally ill.** Some operators set up side businesses, such as van services that residents are required to use to go to out-patient treatment clinics or doctors' offices.

Things to look for:

- Group therapy sessions where recreational or diversional activities are provided.

- Mental health providers seeing patients who are non-communicative or cannot benefit from psychotherapy (patients in coma, patients in the late stages of Alzheimer's disease, etc.).

- All or most residents in a long-term care facility for the mentally ill receive home health care from the same home health agency or treatment by medical providers for similar medical conditions.

- Does the statement provided at the time of service match the services shown on the EOMB (Explanation of Medicare Benefits) or MSN (Medicare Summary Notice)?

- Be suspicious if a health care provider tells you that the equipment, service or test is free. It won't cost you anything. **MEDICARE DOES NOT PROVIDE ANYTHING FOR FREE!** People on Medicare pay with higher premiums. All of us pay through tax increases.

It is in your best interest and that of all citizens to report suspected fraud. Health care fraud, whether against Medicare, Medicaid or private insurers, increases everyone's health care costs, much the same as shoplifting increases the costs of the food we eat and the clothes we wear. If we are to maintain and sustain our current health care system, we must work together to reduce costs.

To Report Suspected Medicare or Medicaid Fraud
Call Toll-free 1-866-726-2916
Or Write to Address Below